

DECLARATION OF RESTRICTIVE COVENANT

This Declaration of Restrictive Covenant (this “**Restrictive Covenant**”) is entered into by and among 8401 Venture, LP, a Texas limited partnership (“**Owner 1**”), Harvey Kronberg (“**Owner 2**”, Owner 1 and Owner 2, collectively “**Owners**”), and HomeBase Texas, a Texas nonprofit corporation (“**HomeBase**”), as of October 27, 2021.

RECITALS

- A. Owners own that certain tract of land located in Austin, Travis County, Texas more particularly described in Exhibit “A” attached hereto and made a part hereof (the “**Property**”).
- B. Owners desire to provide for the redevelopment of the Property for multifamily residential purposes (the “**Project**”).
- C. Owners have filed with the City of Austin a zoning application Case No. C14-2020-0151 requesting a change in zoning of the Property from LR-MU-CO, SF-6-CO, DR, and SF-2 to MF-4-CO (“**Zoning Case**”).
- D. Contingent upon final approval by the City of Austin City Council of the Zoning Case with no additional restrictions that are not agreed to by Owners, Owners have voluntarily agreed that the Property shall be restricted by this Restrictive Covenant and that this Restrictive Covenant shall be filed of record in the Official Public Records of Travis County, Texas.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to all of the terms and conditions of this Restrictive Covenant, Owners and HomeBase agree that the Property shall be subject to the following covenants, conditions and restrictions, which are impressed upon the Property by this Restrictive Covenant:

I. DECLARATIONS AND AGREEMENTS

- 1.1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:
 - 1.1.1. “**Owners**” means Owners and all future owners of the fee interest or any portion of the Property (whether such fee interest is obtained through a purchase from Owners or through a purchase at a foreclosure sale or trustee’s sale or through a deed in lieu of foreclosure) and their successors and assigns.
 - 1.1.2. “**MFI**” means annual median family income in the Austin statistical metropolitan area, as determined by the director of the City of Austin’s Neighborhood Housing and Community Development Office.

1.1.3. “**Affordable Housing Unit**” means a habitable space reserved for rental by households meeting the following affordability requirements: the Average Affordable Housing Unit Household Earnings among (i) a minimum of 50% of Affordable Housing Units (or 5% of the total number of rental units in the Project) shall not exceed 80% of MFI (“80% MFI Affordable Housing Units”), and (ii) a minimum of 50% of Affordable Housing Units (or 5% of the total number of rental units in the Project) shall not exceed 60% of MFI (“60% MFI Affordable Housing Units”).

1.1.4. “**Average Affordable Housing Unit Household Earning**” means the arithmetic mean of the household earnings of every household leased an Affordable Housing Unit, calculated by adding the household earnings of every household leased an Affordable Housing Unit in the Project and then dividing that sum by the total number of households leased an Affordable Housing Unit in the Project.

1.2. Applicability. Owners hereby acknowledge that the terms, covenants, conditions and provisions of this Restrictive Covenant shall only be binding on Owners and encumber the Property if (i) the City Council for the City of Austin has approved the rezoning of the Property from LR-MU-CO, SF-6-CO, DR, and SF-2 to MF-4-CO, with only those modifications that are accepted by Owner (the “**Zoning Ordinance**”), and (ii) the Property is developed as a multifamily development in accordance with the Zoning Ordinance.

1.3. Affordability Requirements. Subject to the terms and conditions hereof, if a multifamily residential Project is constructed on the Property, then Owners shall provide Affordable Housing Units as required by this section:

- a. 10% of the total number of rental units in the Project shall be Affordable Housing Units (a minimum of 5% of the total number of rental units in the Project shall be 80% MFI Affordable Housing Units, and a minimum 5% of the total number of rental units in the Project shall be 60% MFI Affordable Housing Units). Owners shall provide such Affordable Housing Units for a period of 40 years from the date of a final Certificate of Occupancy is issued for the Project. The following is provided for purposes of clarifying that income averaging is authorized with respect to the 80% MFI Affordable Housing Units and the 60% Affordable Housing Units:
 - i. For the 80% MFI Affordable Housing Units, the household earnings of any individual Affordable Housing Unit may exceed 80% of MFI so long as the Average Affordable Housing Unit Household Earnings among all 80% Affordable Housing Units does not exceed 80% of MFI.
 - ii. For the 60% MFI Affordable Housing Units, the household earnings of any individual Affordable Housing Unit may exceed 60% of MFI so long as the Average Affordable Housing Unit Household Earnings among all 60% Affordable Housing Units does not exceed 60% of MFI.

II. COMPLIANCE, MONITORING AND REMEDIES

- 2.1. Compliance with Affordable Housing Requirements. Beginning on commencement of construction of the Project and continuing until the expiration or sooner termination of this Restrictive Covenant, all occupancy of the improvements to or modifications to improvements on the Property shall be in full compliance with the Affordable Housing Unit Requirements.
- 2.2. Compliance Monitoring of Affordable Housing Units. If Owners are required to provide any Affordable Housing Units under this Agreement, then within thirty (30) days after written request from HomeBase from time to time (but not more frequently than once per calendar quarter), Owners will provide information and materials reasonably requested by HomeBase to evidence Owners' compliance with the Affordable Housing Units required to be provided under this Agreement. In consideration of HomeBase's compliance monitoring activities, Owners agree to make annual payments to HomeBase in the amount of \$100 per Affordable Housing Unit in the Project, commencing on substantial completion of construction of the Project (as evidenced by issuance of the last certificate of occupancy for the Project). Thereafter, during the term of this Agreement, the amount of such annual payments shall increase in accordance with the CPI-U as reported by the U.S. Bureau of Labor Statistics on each fifth anniversary of substantial completion. For example for a project with a substantial completion in 2015, the fee for years 1-5 shall be \$100/year per Affordable Housing Unit, and be recalculated in 2020 based on the change in CPI (using https://www.bls.gov/data/inflation_calculator.htm) for an increase to \$110.38 for years 6-10, and so on through the term of this agreement.
- 2.3. Excusable Delays. Whenever performance is required of the Owners, the Owners shall use all due diligence to perform and take all reasonable and necessary measures in good faith to perform within a reasonable time; provided, however, that if completion of performance is delayed at any time by reasons of acts of God, pandemic, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or material, damage to work in progress by reason of fire or other casualty, or any other cause beyond the reasonable control of the Owners (financial inability, imprudent management or negligence excepted), then the time for performance as herein specified will be extended by the amount of delay actually so caused.
- 2.4. Breach Does Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Restrictive Covenant entitles the Owners to cancel, rescind or otherwise terminate this Restrictive Covenant, but such limitations do not affect in any manner any other rights or remedies which the Owners may have hereunder by reason of any breach of this Restrictive Covenant.
- 2.5. Remedies. Following the occurrence of a breach of Owners' obligations under this Restrictive Covenant, only HomeBase, including its successors and assigns, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. If Owners shall fail to comply with any term, provision or covenant of this Restrictive Covenant and shall not cure such failure within thirty (30) days after receipt of written notice (or if the default is of such character as to require more than thirty (30) days to cure and the Owners shall fail to commence to cure the same within such

period or shall fail to use reasonable diligence in curing such default thereafter) from HomeBase to the Owners of such failure, HomeBase shall have the option of pursuing any remedy it may have at law or in equity, including, without limitation, specific performance or injunctive relief from a court of competent jurisdiction.

III. GENERAL PROVISIONS

- 3.1. Entire Agreement. This Restrictive Covenant, and the exhibits attached hereto, contain all the representations and the entire agreement between the parties to this Restrictive Covenant with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Restrictive Covenant and the exhibits attached hereto. The provisions of this Restrictive Covenant will be construed as a whole according to their common meaning and not strictly for or against Owners.
- 3.2. Severability. The provisions of this Restrictive Covenant are deemed to be independent and severable, and the invalidity or partial invalidity of any provision or portion hereof does not affect the validity or enforceability of any other provision.
- 3.3. Inurement. This Restrictive Covenant and the restrictions created hereby inure to the benefit of and bind Owners, and its successors and assigns. When Owners convey all or any portion of the Property, that former Owners will thereupon be released and discharged from any and all further obligations, if any, under this Restrictive Covenant that it had in connection with the Property conveyed by it from and after the date of recording of such conveyance, but no such sale releases that former Owners from any liabilities, if any, actual or contingent, existing as of the time of such conveyance.
- 3.4. Estoppel Certificates. Within ten (10) days after written request from Owners, HomeBase agrees to execute and delivery a certificate certifying that, to HomeBase's knowledge, (a) Owners are not in default in the performance of its obligations under this Restrictive Covenant, or, if in default, describing the nature and amount or degree of such default, and (b) such other information regarding the status of the obligations under this Restrictive Covenant as may be reasonably requested by Owners.
- 3.5. No Third-Party Beneficiaries. The provisions of this Restrictive Covenant are for the exclusive benefit of the parties hereto, and their permitted successors and assigns, and not for the benefit of any third person, nor shall this Restrictive Covenant be deemed to have conferred any rights, express or implied, upon any third person or the public.
- 3.6. No Dedication. No provision of this Restrictive Covenant shall ever be construed to grant or create any rights whatsoever in or to any portion of the Property other than the covenants, conditions and restrictions specifically set forth herein. Nothing in this Restrictive Covenant shall ever constitute or be construed as a dedication of any interest herein described to the public or give any member of the public any right whatsoever.

- 3.7. Governing Law; Place of Performance. This Restrictive Covenant and all rights and obligations created hereby will be governed by the laws of the State of Texas. This Restrictive Covenant is performable in Travis County, Texas.
- 3.8. Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and will be disregarded in the construction and interpretation of this Restrictive Covenant.
- 3.9. Notices. All notices required or permitted to be given hereunder, or given in regard to this Restrictive Covenant, shall be in writing and the same shall be given and be deemed to have been served, given and received (a) one (1) business day after being placed in a prepaid package with a national, reputable overnight courier addressed to the other party at the address hereinafter specified, or (b) if mailed, three (3) business days following the date placed in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to the party at the address herein specified. Owners or HomeBase may change their respective addresses for notices by giving five (5) business days' advance written notice to the other in the manner provided for herein. Until changed in the manner provided herein, Owners and HomeBase's address for notice is as follows:

Owner 1:

8401 Venture LP, a Texas limited partnership
Attn: Herman Cardenas, Manager
3121 Eagles Nest Street, Suite 110
Round Rock, Texas 78665

Owner 2:

Harvey Kronberg
8405 South 1st Street
Austin, Texas 78748

HomeBase:

HomeBase Texas
Attn: Phyllis Snodgrass
500 West Ben White Blvd., Suite 100
Austin, Texas 78704

- 3.10. Negation of Partnership. None of the terms or provisions of this Restrictive Covenant will be deemed to create a partnership between the Owners and Homebase in their respective businesses or otherwise; nor will it cause them to be considered joint ventures or members of any joint enterprise.
- 3.11. Modification and Amendment. This Restrictive Covenant may only be modified, amended or terminated upon the filing of a written modification, amendment or termination document in the Official Records of the county in Texas where the Property is located,

executed, acknowledged and approved by (a) Homebase or successor; and (b) Owners or successor.

- 3.12. Expiration. This Restrictive Covenant shall be deemed to have terminated and shall be of no further force and effect forty (40) years after the date a final Certificate of Occupancy is issued for the Project; provided, however, the effectiveness of this Restrictive Covenant and the agreements of Owners and Homebase reflected herein are conditioned upon final approval (i.e., third reading) of the Zoning Case by the City of Austin City Council, with no subsequent appeal, and with no conditional overlay or additional restrictions not agreed to by Owners. An affidavit executed by Owners and recorded in the Official Public Records of Travis County, Texas, certifying the facts supporting the expiration or ineffectiveness of this Restrictive Covenant pursuant to the foregoing shall be prima facie evidence that this Restrictive Covenant has terminated and no longer encumbers the Property. Any potential purchaser, lender, investor or tenant of the Property and any other third parties shall have the right to rely on such affidavit without any further investigation or inquiry.
- 3.13. Counterparts; Multiple Originals. This Restrictive Covenant may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.


[Remainder of page intentionally left blank; Signatures follow.]

Executed to be effective as of the date first written above.

OWNER 1:

8401 Venture, LP
a Texas limited partnership

By: 8401 Venture GP, LLC,
a Texas limited liability company

By: 
Herman Cardenas, Manager

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §


This instrument was acknowledged before me on the 27 day of October, 2021 by Herman Cardenas, Manager of 8401 Venture GP, LLC, a Texas limited liability company, the General Partner of 8401 Venture, LP, a Texas limited partnership, on behalf of said limited partnership.

(SEAL)




Notary Public Signature

OWNER 2:

By: 
Harvey Kronberg

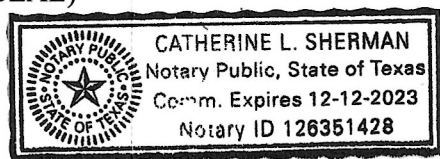
THE STATE OF TEXAS

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§
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COUNTY OF TRAVIS

This instrument was acknowledged before me on the 25th day of October, 2021
by Harvey Kronberg.

(SEAL)




Notary Public Signature

HOMEBASE:

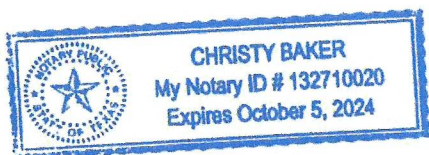
HOMEBASE TEXAS, INC., a Texas
nonprofit corporation

By: Phyllis Snodgrass
Name: Phyllis Snodgrass
Title: Authorized Person

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 22 day of October, 2021
by Phyllis Snodgrass, the Authorized Person of HOMEBASE TEXAS, INC., a Texas non-profit
corporation, on behalf of said non-profit corporation.

(SEAL)



Christy Baker
Notary Public Signature

Exhibit A

Legal Description

Lots 1-A and 1-B, RESUBDIVISION OF LOT 1 OF THE P.F. ORR SUBDIVISION, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 43, Page 25, of the Plat Records of Travis County, Texas.

Lot 1-C, RESUBDIVISION OF LOT 1 OF THE P.F. ORR SUBDIVISION, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 43, Page 25, of the Plat Records of Travis County, Texas.

Lot 2, P.F. ORR SUBDIVISION, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 20, Page 18, of the Plat Records of Travis County, Texas.